IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21-8-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.3402 of 1998

The Management of
Sri Varadaraja Textiles Pvt Ltd.,
Peelamedu,
Coimbatore - 641 004. ... Petitioner

Vs.

1. The Presiding Officer,
Industrial Tribunal,
Madras.

2. The Workmen of
Sri Varadaraja Textiles Pvt Ltd.,
rep.by the Secretary,
Coimbatore-Periyar Dist.Dravida Panchalai
Thozhilalar Munnetra Sangam,
49, Tatabad Street, 3rd Street,
Coimbatore. ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorari calling for the records of the first respondent in I.D.No.3/91 and quash the order dated 8.11.1997.

For Petitioner : Mr.John for
T.S.Gopalan
For 1st Respondent : Mrs.C.K.Vishnupriya,
Government Advocate

For 2nd Respondent : Mr.Chandrasekaran
for Row & Reddy

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O R D E R

Prayer in this writ petition is to quash the award in I.D.No.3 of 1991 dated 8.11.1997 passed by the first respondent herein.

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2. The brief facts necessary for disposal of this writ petition as stated in the affidavit are as follows.

(a) Petitioner is a Spinning Mill having a spindle capacity of 21,316 spindles. On 2.11.1987 a settlement under section 12(3) of the Industrial Disputes Act was made fixing the basic wages for different categories of workmen, the job contents and the workload. The settlement did not fix the strength of permanent workmen. The settlement was made keeping in view the change of workload pattern and the installation of sophisticated machines and the changes in the method of work. Therefore, the vacancies occurring in between the two settlements are not filled up and the Mill is operated by running reduced number of machines and only based on the manpower requirement, the vacancies are being filled up.

(b) According to the petitioner/Management, after the settlement dated 2.11.1987, the petitioner Spinning Mill is producing mainly hank yarn and therefore the activities of Winding department were considerably reduced and the workmen in the said depatment were deployed to other departments. As against the 99 reels, the Mill is having only 51 reels and only 45 frames on an average per shift is put under use and therefore it is not possible to fill up the vacancies as and when the vacancies arises. It is averred in the affidavit that when a maistry or attender reaches the age of superannuation and no suitable person is available for promotion, the concerned workman will be given extension of employment till such a time a suitable person is found.

(c) In the petitioner Mill, there were two latrines with about 16 toilet seats and there was one scavenger. The scavenger not only attend to the cleaning of toilets but also used to clean the yard. When the permanent scavenger retired, alternative arangements were made for cleaning the yard and there was no necessity to engage a full time scavenger. In such circumstances, a part time scavenger was appointed.

(d) On 29.1.1990, the second respondent Union issued a strike notice raising number of demands. Pursuant to which, a dispute was taken up for consideration and the same having been failed during conciliation, a reference was made under G.O.(D)No.15, dated 7.1.1991 to adjudicate the following issues.

(i) Whether the demand of the Union that all the vacancies in all the departments of the Mill should be filled up on the basis of the service and seniority of the workers is justified ? If so, to give appropriate direction.

(ii) Whether the demand of the Union that the workers

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should be made permanent taking into account the present workload with reference to number of machines is justified ? If so to give appropriate directions.

(iii) At present the management has extended the service of about 20 workers beyond their superannuation which affects the promotion opportunities of senior workmen in service. Hence whether the demand of the union that the present system of extending the superannuation of the workers be allowed to be continued without affecting the senior workmen in getting their due promotion in time is justified ? If so, to give appropriate direction. And

(iv) Whether the demand of the Union that the scavengers whould be appointed permanently in order to clean the lavatories in the Mill is justified ? If so, to give appropriate direction.

The said dispute was numbered as I.D.No.3 of 1991 on the file of the first respondent.

(e) The second respondent Union filed a claim statement and contended that there were 51 vacancies in various departments and the petitioner/Management was not filling up the vacancies and therefore the petitioner should be directed to fill up the vacancies. As regards second demand, it was contended that the petitioner was engaging temporary workmen and they should be made permanent taking note of the present workload with reference to the number of machines. As against the third demand, petitioner/Management was extending the service of workmen beyond superannuation and due to such extension of service, the promotional avenues of senior workmen are affected and therefore the presnt system of extending the services of superannuated workmen may be allowed to be continued without affecting the senior workmen in getting their promotion in time. Insofar as the fourth demand is concerned, the second respondent Union urged that a full time permenent scavenger should be appointed.

(f) The said claim statement was resisted by the petitioner/Management by filing a counter statement contending that the vacancies in the Mill had come down and therefore the retirement vacancies were not filled up and some workmen were directed to do additional work. With regard to demand No.2, it was contended that there is no temporary workmen or casuals and the Mill is having only Badlis, who were paid occupational wages and five workmen are paid stipend. Insofar as extension of service granted to the superannuated workman it was contended that promotional opportunities of senior workman were not affected and many of the existing senior workmen had declined promotion. With

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regard to the demand for appointment of permanent scavenger it was alleged that the work of cleaning toilet would not take two hours on a day and therefore there is no justification to have a permanent Scavenger.

(g) The Labour Court examined two witnesses produced by the second respondent Union and marked Ex.W-1 to W-10. The Management examined one witness and marked documents Exs.M-1 to M-12. After the examination of witnesses and hearing the arguments of both sides, the Labour Court passed an award on 8.11.1997 and the same is challenged in this writ petition.

3. The second respondent Union has filed a counter affidavit wherein it is stated that the petitioner/ Management, to circumvent the various labour welfare enactments, is not filling up the permanent vacancies, not regularising temporary employees. It is contended that as against the sanctioned strength of nearly 200 employees only 44 permenent workers are in employment and rest of the posts were either filled up by appointing Badlies/casuals/ Apprentices, or by appointing the retired persons on re-employment basis. According to the Union, the Labour Court rightly rejected the contention of the Management that there was no work available only because some of the works are done on contract basis through outsiders. It is further stated in the counter affidavit that for cleanliness and hyginic condition, a scavenger's service is very much necessary and the petitioner/Management is having nearly 200 employees. If the number of workmen are more than 100, Section 19 (d) of the factories Act, 1948 mandates that latrines and urinals shall be maintained in a clean and sanitary condition at all times. Under Section 19(e), sweepers shall be employed to keep the premises clean and the same cannot be done by a part time sweeper, who attend only two hours in a day and therefore the Labour court was justified in giving direction to appoint permanent scavenger.

4. The learned counsel appearing for the petitioner argued that the impugned award is without jurisdiction and the Labour Court was wrong in giving a blanket direction to the petitioner/Management to fill up the vacancies without mentioning which vacancies are to be filled up and without even ascertaining as to whether those vacancies are still existing. The learned counsel further argued that the number of reelers had come down from 92 to 34 with corresponding reduction in the number of reeling machines and therefore those vacancies cannot be filled up. The management also deployed 15 workers who were attending to cone winding machines to other departments and therefore there is no scope to fill up those vacancies as ordered. The learned counsel also argued that there was a reduction in the manpower requirement due to modernisation and therefore the resultant vacancies cannot be filled up. The learned counsel also argued that there is no

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eight hour work to appoint a permanent full time scavenger and therefore it is not possible to appoint a full time scavenger.

5. The learned counsel appearing for the second respondent Union, relying upon the counter affidavit filed in this writ petition, argued that production in the petitioner Mill has not come down and the number of labourers alone are reduced/converted into casual labourers and by such process, the management violated the statutory obligations under the EPF and ESI Acts and rules. Out of the 200 employees worked, only 18 permanent persons are now working and all the remanining posts were not filled up by permanent workmen, instead, all the posts became vacant were filled up by casual employees or re-employing the retired persons. The learned counsel therefore argued that there is no perversity in the finding of the Labour Court and the Labour Court is justified in passing the impugned award.

6. I have considered the rival submissions made by the learned counsel appearing for the petitioner as well as the learned counsel for the appearing for the second respondent.

7. The point in issue is whether the Labour court is justified in giving a direction to the petitioner/Management to fill up the vacancies by conceding the first and second demand of the second respondent Union and in so far as demand No.3 is concerned finding that there is no point for adjudication and with regard to demand No.4 giving direction to appoint full time scavenger to clean the lavatories daily in all the three shifts.

8. In the petitioner Mill, admittedly there were 200 permanent employees and now there are only 18 permanent employees as contended by the second respondent Union before this Court. When the award was passed, there were 44 permanent workers. There is no justification on the part of the petitioner/Management in not filling up the permanent vacancies, at least to a certain extent, and all the permanent vacancies are now being filled up only by casual employees/by offering re-employment to the workers attaining superannuation. The second respondent is right in contending that due to the said practice followed by the petitioner Management, the right of the lower level employees to get promotion to the higher post are affected.

9. The learned counsel for the petitioner argued that there is no increase in the workload and there is no shortage of manpower. Even if there is no increase in the workload, the existing workload has to be given to the permanent employees and merely because there is availability of persons for casual employment, the petitioner/Management is not justified in not filling up the permanent vacancies. It appears, the vacancies were

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purposely reduced to avoid the welfare schemes introduced by the Labour welfare legislations viz., EPF, ESI, etc., and the said action of the petitioner/Management is to be treated as an unfair labour practice.

10. The contention of the learned counsel for the petitioner that promotional rights of the permanent employees are not affected due to the re-employment offered to the retired employees as the retired persons are re-employed only in the bottom level posts is also not acceptable. It is common knowledge that whenever a person retires from the higher post, the person who are working in the lower post will aspire for promotional post and the avenue of promotion should be made available to avoid stagnation. Then only the employees in the lower level will have a chance to get promotion and if all the higher posts are not filled up for one reason or the other, the rights of the employees, who are in the lower level will be affected and the same is an unfair practice. Similarly, appointing only the casual labourers in the permanent vacancies are to be treated as exploitation of poverty in the guise of appointing casual employees. As rightly contended by the learned counsel for the second respondent in the counter affidavit, when there are more than 200 vacancies only 18 persons are permanently employed and the same is not denied by the petitioner/Management by filing reply affidavit.

11. (a) In the decision reported in AIR 1964 SC 1449 (Mcleod and Co. Ltd v. The Workmen), the Honourable Supreme Court upheld the similar award of the Labour Court wherein the Labour court deprecated the practice of employing retired employees. In paragraph 5, the Supreme Court held as under,

> "....when retired persons are re-employed, they are paid a much smaller salary for doing the same work than they were drawing before retirement. Take, for instance the case of Chandi Charan Banerjee. Before he retired, he was drawing a basic salary of Rs.380/- and dearness allowance. On his re-employment he got a consolidated salary of Rs.250/- without any dearness allowance, and that means that the re-appointed employee was getting about half his former wages for doing the same work. This aspect of the matter introduces a serious infirmity in the appellant's case as it was presented before us by Mr.Sastri. If re-employments are made on the basis of reduced salary, that really means that the appellant is introducing a wage structure in respect of the re-employed personnel which is definitely

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inferior to the wage structure devised for the employees of the appellant by the award, and that clearly cannot be permitted under industrial law. Besides, if senior persons are re-employed after retirement, that is apt to retard or hamper the prospects of promotion to which the junior employees are entitled to look forward. It is in the light of these facts that the question posed by the respondents' demand must be considered. Thus considered, we see no justification for Mr.Sastri's grievance that the limited direction issued by the award is either improper or unjustified. ....."

(b) The learned counsel for the second respondent has also cited the decision of this Court reported in 2002 (1) LLN 317 (Shaw Wallace and Company Ltd., v. Presiding Officer, Second Additional Labour Court, Madras and another) to show that the factual finding of the Labour Court are not to be interfered with while exercising power of judicial review under Article 226 of Constitution of India. In that decision, the learned Judge in fact followed the decision of the Honourable Supreme Court reported in 2000 (2) LLN 930 (Indian Overseas Bank v. Indian Overseas Bank Staff Union), wherein the Honourable supreme court in paragraph 17 held thus,

"the findings of fact recorded by the Tribunal could not be disturbed for the mere reason that the findings were based on material or evidence not sufficient or credible in the opinion of the Writ Court to warrant those findings as long as they were based upon some material which were relevant for the purpose or even on the ground that there was another view which could be reasonably and possibly taken."

12. The findings of the Labour Court having been found not erroneous or perverse, I am of the view that the Labour Court is justified in passing the impugned award. Consequently, the writ petition is liable to be dismissed and accordingly dismissed. No costs.

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To

The Presiding Officer,
Industrial Tribunal, Madras.

1 cc to M/s.Row & Reddy, Advocate, SR.37439/06
1 cc to Mr.T.S.Gopalan, Advocate, SR.37288/06

mr (co)

dv/6.9.06

Order in
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